STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner

v **File No. 121792-001-SF**

Blue Cross Blue Shield of Michigan
Respondent

_____

Issued and entered
this ____ day of November 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On June 8, 2011, XXXXX, authorized representative of XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under Public Act No. 495 of 2006, MCL 550.1951 *et seq*.

The Petitioner has health care coverage through her employer, the City of XXXXX. The plan, administered by Respondent Blue Cross Blue Shield of Michigan (BCBSM), is self-funded. Act 495 authorizes the Commissioner to conduct external reviews for state and local government employees who receive health care benefits in a self-funded plan. Under Act 495, the reviews are conducted in the same manner as reviews conducted under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. The Petitioner's benefits are described in BCBSM's *CMM-PPO* benefit plan.

Because the case involves medical issues, the Commissioner assigned the case to an independent medical review organization. The reviewer's analysis and recommendations were submitted to the Commissioner on June 29, 2011. A copy of the complete report is being provided to the parties with this Order.

II. FACTUAL BACKGROUND

The Petitioner has a history of atrial fibrillation. She received mobile cardiac outpatient telemetry (MCOT) services from February 5, 2011 to February 23, 2011, as prescribed by her

doctor. BCBSM denied coverage, concluding that the procedure is investigational and therefore not a benefit under the certificate. The charge for the MCOT services is $4,500.00.

The Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM held a managerial-level conference, and issued a final adverse determination dated March 30, 2011, affirming its position.

III. ISSUE

Did BCBSM properly deny coverage for the Petitioner's heart monitoring as investigational?

IV. ANALYSIS

Petitioner's Argument

The Petitioner's representative, in the request for external review wrote:

> Contrary to the finding in the Plan Denial Letter, and the denial of the first appeal, the Services are well-established as clinically effective and are a covered Plan benefit . . . medically necessary and appropriate for this Patient. This conclusion is supported by the clinical determinations of the Ordering Physician, the standards of care in the medical community, studies in peer-reviewed and other medical literature, the terms of the Patient's Plan coverage and applicable law.
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> . . . This technology was approved by the FDA in November 1998 and is covered by the Level 1CPT codes 93229 for the technical component and 93228 for the professional component. Mobile cardiovascular telemetry services for the indication involved in this case have now been used effectively by the medical community in the United States for over a decade, and the health plans that cover this clinically valuable service for this indication include, among others, Medicare . . . Tricare, Highmark BC/BS, Independence BC/BS, Wellmark BCBS, Aetna, Cigna, and Humana.

BCBSM's Argument

BCBSM states that the Petitioner's health plan requires that a service be medically necessary in order to be a covered benefit. The plan excludes coverage for services considered to be experimental or investigational.

BCBSM's medical policy on the service in question includes this conclusion:

> Real-time outpatient cardiac telemetry is considered experimental/investigational in patients who experienced symptoms suggestive of cardiac arrhythmias (i.e., palpitations, dizziness, presynscope or syncope). While this service may be safe,

> its effectiveness in capturing arrhythmias for immediate treatment, as opposed to conventional outpatient cardiac monitoring has not been scientifically determined.

In its final adverse determination addressed to the Petitioner's authorized representative, BCBSM wrote:

> BCBSM currently considers procedure 93229 (wearable mobile cardiovascular telemetry w/ technical support) investigational, and therefore, benefits are not warranted.
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> * * *
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> An investigational treatment has not been scientifically proven to be as safe and effective for the treatment of the patient's condition as conventional treatment. Because the services are currently considered investigational, unless this member has a signed valid prior valid agreement, the patient is not responsible for this charge. This patient is covered by the City of XXXXX's *CMM-PPO* health care plan, which excludes benefits for investigational services. . . .

Commissioner's Review

The question of whether the Petitioner's heart monitor was investigational for treatment of her condition was presented to an independent medical review organization (IRO) for analysis as required by Section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6). The IRO reviewer is a physician board certified in internal medicine and cardiology who has been in practice for more than 15 years. The reviewer is familiar with the medical management of individuals with the Petitioner's condition. The IRO reviewer's report includes the following analysis and conclusion:

> [T]he member has a history of recurrent symptomatic atrial dysrhythmias treated with several ablation procedures. . . . [I]n these circumstances, if additional evaluation for cardiac dysrhythmia was thought to be medically necessary, then non-real time (off-line) monitoring devices such as Holter monitoring or event monitoring should be sufficient for identification of both symptomatic and asymptomatic dysrhythmias. . . . [C]ontinuous off-line Holter monitoring for 24 to 48 hours should be able to effectively identify symptomatic or asymptomatic dysrhythmias that occur frequently. . . . [S]elf-activated, non-real time and non-continuous monitoring devices (event records) should be effective in recording symptomatic dysrhythmias with less frequent symptoms. . . . [I]n cases of infrequent asymptomatic dysrhythmias that require identification, non-real time (off-line) monitoring devices with auto-triggering capability should be sufficient. . . . [T]here was no documentation to indicate that the member would not have been able to effectively manage these standard monitoring devices. . . . [C]urrent expert consensus guidelines consider Holter monitoring and patient activated event records appropriate initial tests for the evaluation of supraventricular

> dysrhythmias. . . . [O]ff-line analysis of a patient activated device, auto-triggered device or continuous Holter monitor should have been sufficient to identify dysrhythmias without jeopardizing patient safety in this case. . . . [I]mmediate recognition and reporting of dysrhythmias through a call center provided by real-time mobile telemetry services has not been shown to improve health outcomes compared to standard monitoring techniques.
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> [T]he mobile cardiovascular telemetry services that the member received were investigational for diagnosis and treatment of her condition.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

The Commissioner finds that the mobile cardiac outpatient monitor is investigational for treatment of the Petitioner's condition and is therefore not a covered benefit under the terms of the certificate.

V. ORDER

Respondent Blue Cross Blue Shield of Michigan's final adverse determination of March 30, 2011, is upheld. BCBSM is not required to cover the Petitioner's heart monitor.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

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R. Kevin Clinton
Commissioner